

REFERENCE TITLE: deferred presentment loans

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2330

Introduced by
Representatives McClure, O'Halleran: Anderson, Biggs, Burns J, Konopnicki,
Lopez L

AN ACT

AMENDING SECTIONS 6-1257, 6-1260 AND 44-6852, ARIZONA REVISED STATUTES;
REPEALING SECTION 6-1263, ARIZONA REVISED STATUTES; RELATING TO DEFERRED
PRESENTMENT COMPANIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 6-1257, Arizona Revised Statutes, is amended to
3 read:

4 6-1257. Duties of licensees

5 A licensee:

6 1. Shall meet the financial responsibility requirements of this
7 chapter.

8 2. Shall deal openly, fairly and honestly in the conduct of the
9 deferred presentment business.

10 3. Shall at all times and in every branch office conspicuously post a
11 notice in English and Spanish that states the fee charged for deferred
12 presentment services **AND TO ALL TELEPHONE INQUIRIES SHALL VERBALLY PROVIDE
INFORMATION ON FEES CHARGED FOR DEFERRED PRESENTMENT SERVICES.**

13 4. Shall file with the superintendent a statement of the fees charged
14 at every location that is licensed for deferred presentment services. The
15 licensee shall file the statement annually and include the statement with the
16 licensee's renewal application.

17 Sec. 2. Section 6-1260, Arizona Revised Statutes, is amended to read:

18 6-1260. Deferred presentment; amount; fees; loans to members of
military service; partial payment

19 A. The licensee may accept for deferred presentment or deposit a check
20 with a face amount of at least fifty dollars but not more than five hundred
21 dollars, excluding the fees permitted in subsection F of this section.

22 B. For each check the licensee accepts for deferred presentment or
23 deposit, the licensee and the customer shall sign a written agreement that
24 contains the name or trade name of the licensee, the transaction date, the
25 amount of the check, the amount to be paid by the maker, a statement of the
26 total amount of the fees charged, expressed both as a dollar amount and as an
27 effective annual percentage rate, a disclosure statement that complies with
28 state and federal truth in lending laws and a notice to the customer as
29 prescribed in subsection C of this section. The written agreement shall
30 expressly require the licensee to defer presentment or deposit of the check
31 until a specified date.

32 C. A licensee shall provide a notice in **ENGLISH AND SPANISH IN** a
33 prominent place on each written agreement that specifies **that ALL OF THE
FOLLOWING:**

34 1. No customer may have outstanding more than one deferred presentment
35 service agreement at one time. **and**

36 2. The face amount, **~~exclusive of any fees,~~** cannot be more than five
37 hundred dollars.

38 3. **PRIOR DEFERRED PRESENTMENT SERVICE AGREEMENTS SHALL BE CLOSED FOR
AT LEAST SEVENTY-TWO HOURS BEFORE A NEW AGREEMENT IS EXECUTED.**

39 4. **BEFORE ENTERING INTO A WRITTEN AGREEMENT WITH A CUSTOMER,** a
40 licensee shall ask every customer who seeks deferred presentment services
41 whether that customer has any outstanding checks payable to **THE LICENSEE OR**

1 other licensees. THE LICENSEE SHALL POST IN WRITING THAT STATE LAW ALLOWS
2 ONLY ONE DEFERRED PRESENTMENT AT A TIME AND SHALL REQUIRE THE CUSTOMER TO
3 SIGN A STATEMENT ACKNOWLEDGING THAT THE LICENSEE INFORMED THE CUSTOMER OF THE
4 RESTRICTION.

5 D. A licensee may rely on the customer's representation of whether the
6 customer has any outstanding checks for deferred presentment held by other
7 licensees.

8 E. The maker of a check has the right to redeem the check from the
9 licensee before the agreed on date of presentment or deposit if the maker
10 pays the licensee the amount of the check.

11 F. A licensee shall not directly or indirectly charge any fee or other
12 consideration for accepting a check for deferred presentment or deposit that
13 is more than fifteen per cent of the ~~face~~ amount of the ~~check~~ ACTUAL LOAN for
14 any initial transaction or EIGHT PER CENT FOR any extension.

15 G. A licensee may impose the fee prescribed in subsection F of this
16 section only once for each written agreement. The fee is earned on execution
17 of the written agreement and is not subject to any reimbursement even if the
18 maker redeems the check pursuant to subsection E of this section.

19 H. The fee charged by the licensee is not interest for purposes of any
20 other law or rule of this state.

21 I. A person may extend the presentment or deposit of a check not more
22 than three consecutive times. For each extension the customer and the
23 licensee shall terminate the previous agreement and sign a separate
24 agreement. During an incomplete transaction the customer may not receive any
25 additional monies from the licensee. The licensee may charge a fee as
26 prescribed in subsection F of this section for each extension. If a customer
27 has completed a deferred presentment transaction with the licensee, the
28 customer may enter into a new agreement for deferred presentment services
29 with the licensee ONLY IN ACCORDANCE WITH SUBSECTION C, PARAGRAPH 3 OF THIS
30 SECTION. A transaction is completed when the customer's check is presented
31 for payment, deposited or redeemed by the customer for cash.

32 J. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, if a check is
33 returned to the licensee from a payer financial institution due to
34 insufficient funds, a closed account or a stop payment order, the licensee
35 may use all available civil remedies to collect on the check including the
36 imposition of the dishonored check SERVICE fee prescribed in section 44-6852.
37 THE LICENSEE SHALL NOT CHARGE A DISHONORED CHECK SERVICE FEE MORE THAN TWICE
38 FOR A CHECK RETURNED DUE TO INSUFFICIENT FUNDS. THE LICENSEE SHALL NOT
39 CHARGE A DISHONORED CHECK SERVICE FEE MORE THAN ONCE FOR A CHECK RETURNED DUE
40 TO A CLOSED ACCOUNT OR A STOP PAYMENT ORDER. An individual who issues a
41 personal check to a licensee under a deferred presentment agreement is not
42 subject to criminal prosecution pursuant to title 13, chapter 18.

43 K. AFTER A PERSON EXTENDS THE PRESENTMENT OR DEPOSIT OF A CHECK THREE
44 TIMES PURSUANT TO SUBSECTION I OF THIS SECTION, THE LICENSEE SHALL ESTABLISH

1 A PAYMENT PLAN FOR THE CUSTOMER AT A MONTHLY RATE NOT TO EXCEED ONE AND
2 ONE-HALF PER CENT OF THE AMOUNT OWED.

3 L. NOTWITHSTANDING ANY OTHER LAW:

4 1. LATE FEES SHALL NOT ACCRUE FOR AT LEAST TWO WEEKS FOLLOWING THE
5 FINAL EXTENSION OF THE PRESENTMENT OR DEPOSIT OF A CHECK PURSUANT TO THIS
6 SECTION.

7 2. A LICENSEE SHALL NOT COMMENCE LEGAL ACTION FOR AT LEAST NINETY DAYS
8 FOLLOWING THE FINAL EXTENSION OF THE PRESENTMENT OR DEPOSIT OF A CHECK
9 PURSUANT TO THIS SECTION.

10 M. IF LENDING TO A MEMBER OF THE MILITARY SERVICE OF THE UNITED STATES
11 OR THE SPOUSE OF A MEMBER OF THE MILITARY SERVICE OF THE UNITED STATES, A
12 LICENSEE:

13 1. SHALL NOT GARNISH ANY MILITARY WAGES OR SALARY.

14 2. SHALL NOT CONDUCT ANY COLLECTION ACTIVITY AGAINST A BORROWER WHO IS
15 A MEMBER OF THE MILITARY SERVICE OF THE UNITED STATES OR THE SPOUSE OF THE
16 MEMBER DURING THE MEMBER'S DEPLOYMENT TO A COMBAT OR COMBAT SUPPORT POSTING
17 OR DURING ACTIVE DUTY SERVICE BY A MEMBER OF THE NATIONAL GUARD OR ANY
18 MILITARY RESERVE UNIT OF ANY BRANCH OF THE ARMED FORCES OF THE UNITED STATES.

19 3. SHALL NOT CONTACT THE COMMANDING OFFICER OF A BORROWER WHO IS A
20 MEMBER OF THE MILITARY SERVICE OF THE UNITED STATES OR ANYONE IN THE
21 BORROWER'S CHAIN OF COMMAND IN AN EFFORT TO COLLECT ON A LOAN MADE TO THE
22 MEMBER OR THE MEMBER'S SPOUSE.

23 4. IS BOUND BY THE TERMS OF ANY REPAYMENT AGREEMENT THAT THE LICENSEE
24 NEGOTIATES WITH RESPECT TO THE BORROWER THROUGH MILITARY COUNSELORS OR
25 THIRD-PARTY CREDIT COUNSELORS.

26 5. SHALL NOT MAKE A LOAN TO A MEMBER OF THE MILITARY SERVICE OF THE
27 UNITED STATES IF A MILITARY BASE COMMANDER HAS DECLARED THAT A SPECIFIC
28 LOCATION OF THE LICENSEE'S BUSINESS IS NOT ACCESSIBLE TO MILITARY PERSONNEL.

29 N. A LICENSEE SHALL NOT PROHIBIT THE PARTIAL PAYMENT OF A DEFERRED
30 PRESENTMENT LOAN IF THE PARTIAL PAYMENT EQUALS AT LEAST ONE-THIRD OF THE
31 TOTAL AMOUNT OWED.

32 Sec. 3. Repeal

33 Section 6-1263, Arizona Revised Statutes, is repealed.

34 Sec. 4. Section 44-6852, Arizona Revised Statutes, is amended to read:

35 44-6852. Dishonored checks; service fee

36 Notwithstanding any other law EXCEPT AS PROVIDED IN SECTION 6-1260, the
37 holder, payee or assignee of the holder or payee of a dishonored check,
38 draft, order or note may charge and collect from the maker or drawer a
39 service fee of not more than twenty-five dollars plus any actual charges
40 assessed by the financial institution of the holder, payee or assignee of the
41 holder or payee as a result of the dishonored instrument.